



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE NEED FOR A CRIMINAL COURT

HERBERT HARLEY

Professor of Legislation, Northwestern University

The thing that shames us most as Americans is our failure to cope with crime in our cities. We have tried a number of expedients in recent years but it is very doubtful if the situation is at all improved over twenty or forty years ago. We are bound to develop some better method or we shall be, in spite of much intelligent legislation and an unequaled public interest, at least a century behind nations with which we should prefer to be compared favorably.

There are many reasons for our failure in criminal law enforcement because there are many agencies involved. The principal agencies are the courts, the prosecutor's office, and the police. In a larger circle we may include the supreme court, the governor, the legislature, the jailers and managers of correctional institutions, and finally volunteer workers and social organizations. If one of these agencies fails the work of all the others is in a degree frustrated.

We can practically eliminate from complaint some of these factors. Governors usually exercise the pardoning power in a sensible manner. Legislatures are commonly receptive to new ideas in penology. The police can be absolved from the greater blame because the worst evil is not failure to apprehend the criminal. The prosecutor is usually vigilant and fairly competent. At any rate this office is under the daily observation of the courts and in large measure subject to their control. It is no secret that promptness and certainty of conviction constitute the most effective deterrent to crime. But our *courts* yield neither promptness nor certainty.

It must be admitted at the outset that our criminal procedure, at points beyond the control of courts and legislatures, is often a handicap. But only a few cases ever reach formal trial with a jury. More than nine-tenths present administrative rather than legal problems. They are capable of influence through a policy of administration. But the courts are rarely capable of formulating a policy, or of adhering to one, or of co-operating with the prosecutor and the police.

There is probably not a city in the United States which has a court with complete jurisdiction in criminal cases. The division appears to be universal between courts that try the lesser criminal cases and those that try cases which, in popular estimation at least, are more serious. This division of judicial power represents no present practical need whatever; it is merely a persistence of political machinery past the time when it can serve the use which called it into being.

The common law division of crimes into misdemeanors and felonies met administrative needs in the Colonies and in the States for a long time. While more numerous, the misdemeanors were more easily dealt with and imposed little strain on localized judicial machinery. They called for prompt treatment, and so local magistrates were provided in every cross-roads village. Felonies were comparatively rare in any community. They carried penalties so consequential as to justify the most formal method of trial in a court presided over by a competent judge. In most localities such a court could not be convened oftener than two, or four, times a year. The delay usually benefited the accused. The dulling of witnesses' memories, the influencing of witnesses, the buying them off or spiriting them away, were all facilitated. This system is probably still needed in sparsely settled parts of the country, and there it is capable of yielding fairly good results. But in our cities it is the greatest single cause for the nerveless, halting, irresponsible, slow, uncertain and generally inefficient administration of criminal justice.

The most significant fact is that we have in our cities two courts—two separate pieces of judicial machinery—to perform what is essentially a single function. No amount of effort has ever availed to make the courts which deal with the more numerous class of cases amenable to a standard of efficiency. We have made no progress in divorcing the police judge from politics of the most vicious sort, except perhaps for short periods in a few localities. In this field, which is probably the most significant in the entire war against crime, we put our weakest agents to the front.

The courts that try felony cases exercise only limited power and responsibility. The cases which they entertain are usually shaped in their earlier processes by the examining magistrate. No amount of endeavor can avail to induce these two courts to co-ordinate their efforts. They are forbidden by their very nature to co-operate and could not do so successfully however hard they might try. The efforts of excellent judges are largely defeated by the failings of one or more irresponsible ones, for the theory of judicial independence exists in courts of the most limited jurisdiction and in the face of the most obvious dependence upon adverse influences.

Two principal evils are common under this system:

1. The regular grist of police court cases is handled in a machine-like manner. There is no thought and no opportunity for employing the court effectively in preventing the commission of petty offenses.
2. The felony cases are commonly permitted to drag along so as to prejudice the prosecution and give every possible advantage to the accused. Many of these cases are botched before they reach the criminal court through the clumsy and irresponsible methods of the police judge sitting as examining magistrate.

Certain evils are certain to persist as long as we have two courts in a field where only one is needed. As long as we create inferior courts, that is the kind of courts we will have. We cannot expect force, dignity and responsibility in a court with only a small slice of jurisdiction. Men of force and character will not accept such positions. This implies short terms, so that all factors combine to make the police judge a politician. No other officer can be so useful, in devious ways, to the party, as the police judge. The power to issue warrants or to grant immunity is a mighty power to reward the friends of a party and punish its enemies. The police judge is not only protected by the theory of judicial independence but he can rely on political protection, and in the greater part of his work he is not aided or checked by the responsible element in the legal profession. He is constantly exposed to every corrupting influence in political and social life. As long as there are two courts in this field there can be no inclusive official programme for preventing the commission of offenses. Officialdom can always "pass the buck" as long as the function is divided. There is in life no division of criminals into those who commit misdemeanors and those who commit felonies. They constitute together a class with common interests. Though the professional criminal may avoid minor infractions as beneath his dignity, nearly every person who is guilty of lesser offenses is capable of developing suddenly into a dangerous criminal. Probably most homicides are committed by those who have previously figured only in the petty offender class. The bigger operators usually avoid the "raw stuff."

One of the big factors in criminal prosecutions is the complaining witness. Though presumably a law-abiding citizen, for whom the courts and machinery of the law exist, we make his position in our perverted system as difficult as possible. We subject him and the other people's witnesses to costly and wearing delays. In some places it is dangerous as well as odious to be a witness for the state. Often a long series of appearances, each with its waste of time and possible indignities, is imposed upon the people's witnesses. They may be summoned before the magistrate at the preliminary examination, later at the grand jury hearing, and finally in the criminal court. Often they are subject at every stage to insidious temptations to get out of the whole miserable affair as cheaply as possible. Nobody wants to be a complaining witness a second time. The continuances which wear out his patience benefit the accused, who is often out on bail and may be continuing his depredations on society.

In most of our cities this disjointed and nerveless judicial system is the weakest part of the machinery of government. Our cities have made gratifying progress in other fields in the past two decades and can look upon present attainments with some degree of complacency. The only really vital step that still remains to be taken to improve city government and control the crime situation is to create a real criminal court.

There is such need for unifying all the courts of a community that it may be said that the ideal criminal court would be merely a department of a single inclusive metropolitan court. That would permit of the utilization in the criminal field of the most effective judges in the entire organization and would afford added opportunity for minimizing the evils of the least efficient. But the creation of a unified criminal court is likely to be accomplished in certain cities as an intermediate stage. Let us consider what opportunities such a court would have to make a record of achievement.

In the first place such a court would be the only court in the locality having responsibility in the criminal field. Its judges would all have equal and complete jurisdiction in criminal and quasi-criminal cases. It would necessarily have a presiding judge with power to control its calendars and to assign associate judges to special branches. It would be required to collect and publish complete statistics. Its judges would hold meetings at least once a month to discuss policies and methods of administration.

Such a court would begin with as much specialization as has been common. One judge would be assigned to cases arising under city ordinances in which arrests and bail are seldom needed. One or more would specialize in preliminary examinations in cases of felony to be tried subsequently, if at all, by other judges of the court, selected for their ability in jury trials so that records may be made which will stand in the appellate court. Probably further specialization would immediately be adopted. To create a special branch the presiding judge would need only to order that cases of a certain kind should be segregated and assign to them a judge chosen for his special experience or personal fitness.

One of the most insistent needs is for a branch specializing in the cases of boys who are too old for the juvenile court. It should take all boys regardless of the nature of their offenses. The years between sixteen and twenty-two are the critical years in the boy's life. It is then that he grows out of the discipline of the home and the school and is expected to make his way in a fiercely competitive world. It is then, before his powers of inhibition are developed, that he is subject to the greatest inner stresses, that desire is most keen and temptation strongest. The half-grown man needs special consideration in the court system even more than the child. First offenses of felony are usually committed by a minor. The instability of youth, which makes it most subject to temptation, also makes it most amenable to encouragement. The impulses are ready to react to good as well as evil influences. The criminal court in one city, by sending boys charged with felony to country homes, made a record over a period of four years of saving ninety-seven per cent. from the second offense. This intelligent system of administration saved the community in this brief period from hundreds of crimes and scores of professional criminals.

Similarly there should be also a segregation of the cases of girls and women, and an opportunity for applying a policy especially to the cases of prostitution. This field should react favorably to sensible and consistent treatment. Some of our most glaring blunders in these cases at least would disappear if a single judge, answerable to his colleagues in a measure, were made responsible.

There would almost necessarily be a special branch for receiving the cases in which non-support, desertion and contributing to the delinquency of minors are charged. This domestic relations or family court should ideally have also the divorce cases, but in the strictly criminal field it can accomplish wonders, as has been amply demonstrated.

The opportunity for speedily establishing additional branches for special purposes would in time add a great deal to our limited experience in enforcing law. Where traffic laws are difficult to enforce—and they usually are, owing to the influence of the offenders—there should be one branch especially for these cases, so that a single judge would become responsible for protecting life on the highways. If bootlegging is prevalent, and it now threatens to be one of our most prolific sources of crime for a few years at least, there should be a judge specializing in this field in order that expertness may be attained, that there be a policy and consistency in the application of the law to such cases.

It is not more law that we need, on most subjects, but more expertness and more concentrated responsibility in its enforcement. Let every offender realize that he faces in his judge the representative of a strong and self-respecting court. Let every judge feel that he is responsible for a definite part of the enforcement of the law.

There may easily be more special branches than there are judges, in a city of half a million or less, for in some branches half of each day, or one or two days a week, will suffice.

The presiding judge may take personal charge of the important duty of issuing warrants or may hold himself in readiness to fill in wherever needed. The unified criminal court should have entire control of the probation force, which can be indefinitely augmented through volunteer services.

The new court will not be willing to blunder along without a psychopathic laboratory, for its principal aim will be to prevent recidivism. Recent studies of the inmates of prisons in several states have revealed the high percentage of defectives among criminals. An experienced judge will often suspect defectiveness from the appearance and conduct of the accused and will even become adept in picking out the more marked cases, but without the aid of a psychopathologist he will be guessing as to both qualitative and quantitative factors. Unless he knows the kind of individual at bar he cannot select the most effective form of sentence from the variety now open to his choice.

It is now established that our correctional institutions, though wisely conceived, have largely failed because they have received indiscriminately three classes who should never be permitted to live together, namely: the normal, the feeble-minded, and those afflicted with defects of the affective centers. The normal are capable of reforming—of reacting to corrective and educational treatment. The feeble-minded need more than anything else a protective environment. The third class, those affected with dementia praecox, constitute the great problem. Though frequently bright and likeable, they can never be depended upon. They corrupt the other two classes to such a degree that segregation is necessary. They bring parole and probation into disrepute. The doubly unfortunate, who are feeble-minded on both the intelligence and affective sides, are certain to defeat all efforts for genuine reform. They should be always under observation. It is this class that is responsible for the particularly crass and brutal crimes for the prevention of which our existing system of courts and prisons has proved wholly and frankly unfit.

Now consider such a court, which should be no very distant ideal, in its external relations. It has a workable organization, a single responsibility to the community, and hence a chance to succeed. It will hold the prosecutor's office and the police to a sensible standard. The act creating the Municipal Court of Chicago made every policeman of the city *ex officio* a bailiff. The court soon discovered a practice among police captains of serving or not serving warrants according to their personal views. Warrants for the capture of gambling devices were pigeon-holed until the owners had time for concealment. The Chief Justice of the court called in the offending captain, who insisted on his right to do as he pleased in his own field. Then the chief justice read the law to him, instituted a warrant record, and threatened to hold him, or his chief, or any patrolman, in contempt of court if warrants were not served promptly. This firm stand at the outset made the entire police force a dependable arm of the court and relieved the force of much of the vicious influence exerted by criminals with money and political pull. There would be small chance for friction between such a court and the prosecutor or the police chief. They would work in harmony, and for the first time the community would have energy, resourcefulness and experience allied in its fight against crime.

The unified criminal court would also get along better in its relations with the appellate courts, for its important trials would be presided over by judges most capable of avoiding error. Scandals in this field would disappear.

The only argument that has been offered in opposition to the projected court is that the work of conducting police branches is inherently degrading, so that the type of lawyer needed for judge would refuse to serve in a court which might impose this invidious work on him, and in consequence the entire court would sink to the level of the present police courts. The criticism deserves consideration. In the

first place it must be observed that police branches under the new régime would be entirely unlike those which are now so odoriferous. With the morals cases, ordinance cases, domestic relations cases and possibly other special classes, winnowed out for special treatment, the police court as we have known it would practically disappear. Except in a few of the largest cities there would be no reason for maintaining courts except at the central criminal court building. The miscellaneous misdemeanors could be taken care of by a single judge, usually in a half day session. There would be no occasion for the "case a minute" routine which disgraces many police courts. The court would strive for the prevention of subsequent offenses and to this end each individual offender would be studied and given the special treatment indicated, just as is now done in the juvenile courts of the country.

It is the judge that makes the court and a serious disposition toward what have been looked upon as petty offenses, but which in reality constitute the seed-bed of crime, would completely alter the situation. The new system has no place for the noxious police court of this period and it would disappear. All the judges of the court would participate in the responsibility of *preventing* crime and would share in the honor of achievements attained.

Such a court in the average city could, it is believed, reduce crime of all kinds about fifty per cent. in the first two or three years, and in five years could reduce it to less than one-third of what it has been. Incidentally, whichever of our cities makes the experiment first will benefit most speedily, for a good share of its criminal population will shift to other centers. Any degree of success in this field means protection to the public, a saving of property values, and the rescuing of youth from its greatest peril. It means also the breaking down of the semi-organized world of vice and crime which tends so strongly to corrupt our police and lesser administrative officials. It would largely relieve the strain on our system of criminal procedure, which is fundamentally secured by constitutions and unchangeable habits of thought. It would in large measure wipe out the disgrace of the "shyster" criminal lawyer and so confer the greatest benefit upon the legal profession. The bond shark would disappear in short order.

At the beginning there would be no reduction of the machinery of punishment and correction. Additional institutions might be needed. But in a few years this field would experience relief and in time would have less volume of cases and tend to become self-supporting.

One of the greatest opportunities within reach lies in affording scope for the abundant volunteer work of individuals and social organizations already interested in crime reduction. A responsible court would discover numerous ways of utilizing these great social forces. It would have numberless coadjutors who only need intelligent official leadership to become of the highest value. The entire community would take an interest in a determined campaign against crime and would rejoice in every gain recorded, so that the criminal court

judges would soon become the most conspicuous local officials for their civic worth, instead of for their conspicuous shortcomings, as is now too often the case.

Not many years ago we were despondent of city government generally. In fifteen years there has been a revolution in the executive and legislative branches. Regarding the judicial work which is essentially urban in character there is no sufficient reason either for despair nor for acceptance of the various explanations for our national weakness. It is true that no substantial progress has been made notwithstanding the adoption of the indeterminate sentence, paroles, probation and prison reform. Our correctional institutions reform only a small proportion of their inmates—or victims, they might be called, for many of them learn crime in the “reformatory.” Our prisons grow as rapidly at least as our urban populations. Our courts yield practically no data for constructive programmes. Burglary and automobile thieving are fairly successful occupations in many of our cities. With respect to hold-ups there is no comparison with foreign cities, for we monopolize this picturesque branch of crime. We are heartily shamed by any comparison of homicide statistics with those of civilized or semi-civilized countries.

It is no excuse that ours is a young nation. Our political institutions are, on the whole, as mature as those of other nations with which comparisons are made. Our cities are newer than many of the safe and orderly cities of other industrial nations. That newness is no excuse is clearly proved by the fact that most of our Rocky Mountain and West Coast cities have better records than those in the Central West and East. We have no warrant for excusing ourselves on the ground of newness. Nor do free institutions imply lawlessness, as is demonstrated by Norway, a country which is practically without crime. Nor diverse racial strains, as is proved by Switzerland.

Some slight justification for criminal conditions may seem to be found in the hordes of immigrants in certain cities. But Cleveland had the highest percentage of foreign-born and children of foreign-born in the 1910 census, and yet Cleveland is in advance of most cities in crime prevention. These foreign-born people are even more susceptible to environmental influences than our native stock, and where they react badly the blame rests on the environment. If it had not been for the strong arm of the federal government we would have suffered a complete collapse in a number of cities in 1917 and 1918. Where English law and administration prevail a large majority of alien people become law abiding. Our immigrant populations are more the victims than the instigators of our bad criminal conditions. To blame them is to confuse cause and effect.

The fact is that control of crime is nine-tenths an administrative problem, rather than a procedural, legalistic or legislative problem. Administration calls for adequate machinery, and if archaic machinery stands in the way of progress it should be cast into oblivion.